

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ANTHONY RAY DAILEY, #60533-080	§	
VS.	§	CIVIL ACTION NO. 6:17cv85
		CRIMINAL NO. 6:04CR00067-001
UNITED STATES OF AMERICA	§	

ORDER OF DISMISSAL

Movant Anthony Ray Dailey, an inmate confined at F.C.I. Beaumont, filed the above-styled and numbered motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The case was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that the motion should be dismissed as a second or successive § 2255 motion and because Mr. Dailey did not have permission from the Fifth Circuit to file a second or successive § 2255 motion. Mr. Dailey has filed objections.

Mr. Dailey is attempting to bring a second or successive § 2255 motion based on recent decisions by the Fifth Circuit, but the court lacks jurisdiction to consider the motion. A second or successive § 2255 motion must be certified by a panel of the appropriate court of appeals. 28 U.S.C. § 2255(h). Mr. Dailey argues that he does not have to have the motion certified by the Fifth Circuit because the recent decisions involve statutory interpretation. The Fifth Circuit has held, however, that § 2255 does not authorize successive filings based on statutory interpretation; instead, “Section 2255 authorizes a successive filing only when the Supreme Court announces a new rule of constitutional law.” *In re Lampton*, 667 F.3d 585, 590 (5th Cir. 2012). The present

motion must be dismissed for lack of jurisdiction because Mr. Dailey did not have permission from the Fifth Circuit to file it. *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000).

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Mr. Dailey to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Mr. Dailey's objections are without merit. Therefore, the court adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court. It is accordingly

ORDERED that the motion to vacate, set aside or correct the sentence is **DISMISSED** without prejudice for lack of jurisdiction. All motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **6** day of **March, 2017**.



Ron Clark, United States District Judge